

Securities and Exchange Commission

§ 240.14c-2

who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan.* For purposes of § 240.14c-7, the term “employee benefit plan” means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers.* The term “entity that exercises fiduciary powers” means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act, or a broker or a dealer.

(d) *Exempt employee benefit plan securities.* For purposes of § 240.14c-7, the term “exempt employee benefit plan securities” means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current distribution of information statements has been given pursuant to § 240.14c-7(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14c-7(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Information statement.* The term “information statement” means the statement required by § 240.14c-2, whether or not contained in a single document.

(f) *Last fiscal year.* The term “last fiscal year” of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting with respect to which an information statement is required to be distributed, or if the information statement involves consents or authorizations in lieu of a meeting, the earliest date on which they may be used to effect corporate action.

(g) *Proxy.* The term “proxy” includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization

may take the form of failure to object or to dissent.

(h) *Record date.* The term “record date” means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder.* For purposes of § 240.14c-7, the term “record holder” means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term “registrant” means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940 that has made a public offering of its securities.

(k) *Respondent bank.* For purposes of § 240.14c-7, the term “respondent bank” means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

[51 FR 44279, Dec. 9, 1986, as amended at 52 FR 23649, June 24, 1987; 53 FR 16406, May 9, 1988; 57 FR 1101, Jan. 10, 1992]

§ 240.14c-2 Distribution of information statement.

(a)(1) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the

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registrant pursuant to section 14(a) of the Act:

(i) A written information statement containing the information specified in Schedule 14C (§ 240.14c-101);

(ii) A publicly-filed information statement, in the form and manner described in § 240.14c-3(d), containing the information specified in Schedule 14C (§ 240.14c-101); or

(iii) A written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 (§ 239.25 or § 239.34 of this chapter) or Form N-14 (§ 239.23 of this chapter) and containing the information specified in such Form.

(2) Notwithstanding paragraph (a)(1) of this section:

(i) In the case of a class of securities in unregistered or bearer form, such statements need to be transmitted only to those security holders whose names are known to the registrant; and

(ii) No such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report to security holders or a proxy statement under § 240.14a-3(e)(2) if such section were applicable.

(b) The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of corporate action taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken.

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the information statement must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

(d) A registrant shall transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a-16; provided, however, that the registrant shall revise

the information required in the Notice of Internet Availability of Proxy Materials, including changing the title of that notice, to reflect the fact that the registrant is not soliciting proxies for the meeting.

[51 FR 42070, Nov. 20, 1986, as amended at 56 FR 57254, Nov. 8, 1991; 57 FR 1102, Jan. 10, 1992; 57 FR 48295, Oct. 22, 1992; 72 FR 4171, Jan. 29, 2007; 72 FR 42239, Aug. 1, 2007]

§ 240.14c-3 Annual report to be furnished security holders.

(a) If the information statement relates to an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, of security holders at which directors of the registrant, other than an investment company registered under the Investment Company Act of 1940, are to be elected, it shall be accompanied or preceded by an annual report to security holders:

(1) The annual report to security holders shall contain the information specified in paragraphs (b)(1) through (b)(11) of § 240.14a-3.

(2) [Reserved]

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of the information statement are filed with the Commission pursuant to Rule 14c-5, whichever date is later. The report is not deemed to be “filed” with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

(c) A registrant will be considered to have delivered a Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement to security holders of record who share an address if the requirements set forth in § 240.14a-3(e)(1) are satisfied with respect to the Notice